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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-979

EUGENE KEALEY,

Petitioner,

—against—

THE PEOPLE OF THE STATE OF NEW YORK,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF NEW YORK

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In the

Supreme Court of the United States

October Term, 1973

No. .....

Eugene Kealey,

Petitioner,

—against—

The People of the State of New York,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS OF NEW YORK

Petitioner, Eugene Kealey, respectfully prays that a writ of certiorari issue to review the judgment of the Court of Appeals of New York, entered on November 21, 1973, affirming the decision of the Appellate Division of the Supreme Court, Second Judicial Department, which in turn affirmed the judgment of conviction of Petitioner in the County Court, Nassau County on two counts of criminally negligent homicide.

Opinions Below

Petitioner was found guilty on February 12, 1971, after a trial by jury in County Court, Nassau County. The Trial Court did not file an opinion when the judgment of conviction was entered.

The judgment of conviction was affirmed by the Appellate Division of the Supreme Court of the State of New York, Second Department. The Appellate Division's memoran-

dum opinion is reported at 336 N.Y.S.2d 440 (1972), and is set out in the Appendix, *infra*, p. 21. The Court of Appeals opinion is reported at 32 N.Y.2d ——, 348 N.Y.S.2d —— (1973) and is set out in the Appendix, *infra*, p. 17. The order of Sol Wachtler, Associate Judge of the Court of Appeals staying Execution of Judgment of Conviction is set out in the Appendix, *infra*, pp. 22, 23.

Jurisdiction

The judgment of conviction was entered by the Trial Court on May 3, 1971. The judgment of the Appellate Term was entered on March 6, 1972. The Court of Appeals affirmed the conviction without opinion on November 21, 1973. The jurisdiction of this Court is invoked under 28 U.S.C. Sec. 1257(3).

Questions Presented

1. Whether Sec. 125.10 of the Penal Law of the State of New York read with its defining section 15.05(4) of the Penal Law, dealing with criminally negligent homicide is, as written, interpreted and applied, so vague and obscure as to violate the due process clause of the Fourteenth Amendment and Article 1, Section 9, Clause 3 of the Constitution of the United States.

2. Whether, under the Due Process clause, a person can be said to be guilty of the crime of criminal negligence because of his "failure to perceive" a risk that is "substantial and unjustifiable" where such risk and the failure to perceive it constitutes a "gross deviation" from the standard that a reasonable man would observe in a similar situation.

Statement of the Case

On September 14, 1968, at or about 6:00 p.m. (R. 266, 267, 525) Petitioner was driving his automobile in New York on a four lane highway, two lanes in each direction.

While attempting to pass the vehicle in front of him, a Chrysler operated by Richard Lucey, the right front of Petitioner's vehicle came in contact with the left rear of the Chrysler (R. 530, 877, 878). The Chrysler then accelerated, swerved off the road and struck a tree (R. 530, 541). This resulted in the death of Richard Lucey and Margaret Gribbin, a passenger in the Chrysler (R. 612, 614).

The vehicle driven by the Petitioner had been purchased two days prior to the accident (R. 866). He was driving it for the second time when the accident took place (R. 877). Petitioner admitted he was unfamiliar with the car's operation and feel, especially as to the power brakes with which his former car had not been equipped, and the new car's greater width (R. 902, 911, 914).

Petitioner was arrested and charged with two counts of manslaughter in the second degree and two counts of criminally negligent homicide and with driving while intoxicated. The two counts of criminally negligent homicide were dismissed along with the driving while intoxicated charge. The manslaughter counts remained. The trial judge included a charge of two counts of criminally negligent homicide of which Petitioner was convicted.

There is a sharp issue of fact in this case.

The first trial ended in a mistrial. On the second trial witnesses for the People testified there was an odor of

alcohol coming from Petitioner and that Petitioner appeared intoxicated. Doctor Rossano who was on the scene of the accident testified he detected no odor of alcohol on Petitioner's breath when he spoke to him (R. 594) and that the symptoms of intoxication and the symptoms of a concussion can be similar (R. 599). The testimony of a Doctor Grimes corroborated the testimony of Doctor Rossano (R. 837, 838). The testimony of a Doctor Bebry, who treated Petitioner for his injuries approximately six hours after the accident, was that the Petitioner had sustained a concussion (R. 929).

The defense offered testimony by several witnesses, all of whom were local businessmen, that within thirty to sixty minutes prior to the accident, Petitioner, had visited their place of business, appeared normal and gave no appearance of being intoxicated (R. 751, 763, 805, 807). Petitioner testified that shortly before leaving his home prior to the accident, he had had one can of beer (R. 850, 871, 886).

There are other controverted facts. A brief consideration of these facts is necessary to show that cases such as these are often complex.

Several of the People's witnesses testified that at a point in the highway approximately one-half mile from the scene of the accident on a sharp curve the Petitioner, while passing a motor vehicle, crossed the double yellow line, and went over into the southbound lane of traffic and then came back into the northbound passing lane of traffic (R. 310, 345, 347, 348, 349, 390, 391). After he came back into the northbound lane, the witnesses said, he proceeded to a point until these witnesses could no longer see him as he disappeared over a crest in the road (R. 283, 284, 350, 351). There is a conflict of testimony by said witnesses

as to whether he straddled the double yellow line after passing another car (R. 280, 281) at the curve aforementioned, or was wholly within the northbound lanes (R. 347, 348). Petitioner according to the testimony did not interfere with any southbound traffic at the time that he crossed the double yellow line (R. 367).

The Medical Examiner's Report of the autopsy performed on the driver of the other car, Richard Lucey, showed that the driver had .12 of alcohol in his brain and consequently was legally impaired at the time of the accident.

At the end of the trial, after the People's summation, the Judge charged the jury that there was no evidence that Petitioner had exceeded the legal speed limit, but that the jury might consider the factor of speed in making its decision (R. 1057, 1976). The Court, in its charge discussed the testimony concerning the Petitioner's crossing the double yellow line and then charged that the jury could take such fact into consideration, together with all of the facts, to determine whether or not Petitioner was reckless (R. 1064). The Court further charged that the jury might find Petitioner guilty of criminally negligent homicide as a lesser charge (R. 1016) within the manslaughter counts and in charging the jury specifically, read the statutory language of the section to the jury (R. 1061, 1062, 1063). During the course of the jury's deliberation, the jury requested a clarification of the charge (R. 1081) but the Court refused to do so and simply had the reporter read back its original charge (R. 1081).

On February 12, 1971, the jury returned a conviction on the two counts of criminally negligent homicide. All trial motions by Petitioner were denied and judgment of conviction was entered on May 31, 1971. Petitioner was sen-

tenced to a maximum of three years on each count, to run concurrently. An appeal was taken by Petitioner to the Appellate Term, Second Judicial Department. The Appellate Term, affirmed the conviction on March 6, 1972. Thereupon, Petitioner took an appeal to the Court of Appeals of New York. The Court of Appeals affirmed the conviction without opinion on November 21, 1973. On November 28, 1973, Associate Judge of the Court of Appeals, Sol Wachtler, ordered that the Execution Judgment of Conviction be stayed for a period of thirty (30) days to permit Petitioner to apply to this Court for a Writ of Certiorari.

The constitutional question was raised at both the Appellate Term and Court of Appeals of New York.

Statutes Involved

Penal Law of the State of New York, §125.10.

Criminally Negligent Homicide

"A person is guilty of criminally negligent homicide when, with criminal negligence, he causes the death of another person."

Penal Law of the State of New York, Section 15.05, subdivision 4.

Criminal Negligence

"A person acts with criminal negligence with respect to a result or to a circumstance described by a statute defining an offense when he fails to perceive a substantial and unjustifiable risk that such a result will occur or that such circumstance exists. The risk must be of such nature and degree that failure to perceive it

constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation."

Reasons for Granting the Writ

The constitutionality of the statutes involved, read together, have not been ruled upon by the courts of the State of New York. Other jurisdictions which have adopted this Model Penal Code provisions include Illinois (Ill. Ann. Stat. Ch. 38 §§4-6, 4-7), Wisconsin (Wis. Stat. Ann. §§940.06, 940.08), Michigan (Mich. Rev. Crim. Code §§305[c], 305 [d]). The provision is also before the legislatures of numerous other states. There are probably hundreds, if not thousands, of prosecutions each year under this statutory scheme or schemes similar thereto.

The subject statute, Penal Law §125.10, as defined by Section 15.05, Subdivision 4 of the New York Penal Law must fall because it is so vague as not to apprise an individual of precisely what conduct is or is not lawful. The statute acts to alter the role of the trier of fact from that of determining whether or not a particular fact existed to that of the legislature in determining whether a particular fact is or is not criminal.

What precisely would be "gross deviation" or the "applicable standard of care" or "what a reasonable man would have observed" are questions left to the tribunal. The trier of facts is left not to discover facts, which if existing determine a crime. Rather, the trier of facts first must invent some sort of unstated standard and then draw an unworkable and unknown line transforming civil negligence into criminal liability.

The Court of the State of New York in *People of the State of New York* v. *Firth,* 3 N.Y.2d 472, 168 N.Y.S.2d 949 (1957) struck down a similar and more definite statute than that at the bar. The statute, providing that no person should operate a motor vehicle at such speed greater than would permit him to bring a vehicle to a stop with injury to another or his property, was held by the Court to be too vague and indefinite to constitute a sufficient definition of criminal conduct, and contained no sufficient standard by which the driver's conduct could be tested. The Court held the statute did not give a clear and unequivocal warning to those who must obey the rule. Citing cases in *People* v. *Vetri,* 309 N.Y. 401, 405-406, 131 N.E.2d 568, 570-571, the *Firth* court felt that the statute was meaningless on its face. They permitted neither draftsman's comments nor a "saving" explanation by the District Attorney's office to sway the decision. "We may guess at what the draftsman intended . . . and there is material to show what was intended. But that is not sufficient." 3 N.Y. 2d at 474.

This Court will, as it has consistently done in the past, examine Penal Law §125.10 on its face and in its application. The law is vague and therefore unreasonable. In application it encourages precisely what this Court, should discourage, i.e. arbitrary conviction based on whether a particular lapse of perception is felt by the jury to be unreasonable. While such standards may apply in civil cases they will not do in criminal matters.

It has been held that Court will examine very closely those statutes creating a "new" crime. *U.S.* v. *Ragen,* 314 U.S. 513, 524 (1942). The penal statute does create such a "new" crime in doing away with recklessness, grossness

and culpability and substituting therefor "failure to perceive," "reasonable" and "justifiable."

If we examine the statute itself we note that to be held criminally negligent one must (a) "fail to perceive" a risk and (b) that such failure must be a "gross deviation" from a reasonable man standard of case. The risk itself must be "substantial" and "unjustifiable." Is this informative on its face as a criminal law must be? If so, what is a "justifiable risk"? And what constitutes a moderate or nominal as opposed to a "gross" deviation?

The drafters of the Model Penal Code (from which the statutes we are involved with are taken) as noted above, were at a loss to define culpable negligence at the criminal level. ". . . it is impossible to avoid tautological articulation of the final question" and "of the four kinds of culpability defined, there is, of course least to be said for treating negligence as a sufficient basis for imposing criminal liability." Tentative Draft No. 4, Model Penal Code, April 25, 1955, p. 126. The drafters go on in effect to avoid the question, leaving it to the tribunal.

Consider the case of the thoughtful or engrossed employee leaving his work. He enters his automobile to drive home. He should concentrate on driving but cannot.

Such conduct is typical of many of us.

On this day, the employee, while driving, has an accident resulting in someone's death. Is he guilty of criminally negligent homicide under Penal Law §125.10? If he barely misses a pedestrian is he guilty of attempted criminally negligent homicide? Or is he only civilly liable?

The statutory language raises other questions. Is the handicapped driver required to go slowly, more slowly,

much more slowly, than the average driver? Is a person with less ability to perceive and evaluate required to meet a lesser standard?

In New York as in nearly all other states the handicapped can be licensed to drive. "Consequently, one must assume from the language of the statute that if a driver legally proceeds into an intersection and comes into contact with an ambulance or fire vehicle with sirens on but which he did not hear, and a death results, such conduct would not be criminally chargeable against such a driver, although it would be as to another whose hearing was intact" (*People* v. *Buffington*, 304 N.Y.S.2d 746, 61 Misc.2d 429 at 756). Yet, are we not to charge the deaf driver with "failing to perceive" a risk if he does not adjust to his deafness? And what other arbitrary whimsical lines are to be drawn? Certainly it cannot be said that one will know his conduct will fall on the wrong side of such an arbitrary line from the reading of Penal Law §125.10.

The ultimate difference between the previously accepted standard that of "conscious disregard," or, as in other states, "reckless" or "wanton" and the new standard, deliberately chosen, of "failure to perceive" dooms the subject statute. The former standard, an affirmative act, tied in with previous legal history surrounding deliberate, active culpability gave meaning to the previous statute. The new standard creating a negative standard (the failure to perceive) is without meaning. It creates the impossible task of imposing criminal liability on non-criminal acts; of attempting to determine whether a particular individual could have "perceived" or appreciated the difficulties created by his conduct.

The older standards (still in use in most jurisdictions) give, at minimum, guidelines to the jury. When the conduct is a "failure to perceive" the jury really has no standard at all.

The question of the physical ability to perceive suggests other problems. The question is whether a person who is capable of being conscious of the circumstances can at the same time be conscious of creating a risk. The latter consciousness is a prerequisite of the failure to perceive. It may very well be that an individual may be conscious of certain elements but not capable of the conclusion. "Thus an intoxicated person may be conscious of the circumstances without it necessarily following that he can add them up and reach the conclusion that great danger must result." Roy Moreland, "A Rationale of Criminal Negligence" 32 Ky.L.Jour. 141, footnote 191. How then can a jury, without any sort of a standard of culpability, even pretend to be able to discover and apply a standard evolving from a "failure to perceive."

"A statute which either forbids or requires the doing of an act in terms so vague that men of common intelligence must necessarily guess at its meaning and differ as to its application, violates the first essential of due process." *Connally* v. *General Construction Co.*, 269 U.S. 385, 391 (1926). The section of the Penal Law of New York subject herein is "so obscure in is prohibitions that persons potentially subject to it cannot know with fair assurance how to act to avoid liability." Amsterdam, "Federal Constitutional Restrictions on the Punishment of Crimes of Status, Crimes of General Obnoxiousness, Crimes of Displeasing Police Officers And The Like," 3 Crim.Law.Bul. 217.

In examining the statutory criteria one easily sees a major flaw in its language. The statute is not one whose ambiguity and newness can be cured. It is susceptible of continuing irregularity in the course of administration by both judge and jury. "Here is the coercive force of society run loose at the whim of prosecutor and jury, without adequate restraint at the level of the trial court (for want of standards by which to restrain) . . ." Amsterdam, "The Void-for Vagueness Doctrine," 109 Univ.Pa.L.Rev. 91 Fn. 120 in discussion of *Edelman* v. *California,* 344 U.S. 357 (1953). In the second trial of the subject case the jury had to request clarifying instructions. The Judge did not give them clarifying instructions because he could not do so.

Such lack of notice and restraint, as contained in Penal Law §125.10 seriously clouds, in fact makes near impossible, federal review of the administration of justice by state judges and juries. "[S]tatutory standards which by reason of indefiniteness fail to provide crisp legal framing of factual issues have the Court in a virtually impossible pose." Amsterdam, *ibid.* p. 80. Overreacting of authority by state judges and juries remain concealed behind sweeping statutes such as that at the Bar.

"An over-vague criminal law licenses the jury to create its own standard in each case." *Herndon* v. *Lowry,* 301 U.S. 242, 263 (1967). The propensity of the statute involved in this case is to fall completely within the ambit of *Herndon,* that is, encouraging arbitrary conviction. There is no standard applied to petitioner to take him across the line from civil liability to criminal liability. The legislature has turned the definition of criminally negligent homicide over to the judge ". . . the criminality

of an act cannot depend upon whether a jury may think it reasonable or unreasonable." *People* v. *Charles Austin, Inc.*, 307 Mich. 456, 3 N.W.2d 841.

Petitioner was convicted because the jury felt he was unreasonable. When the idea of reasonableness arises we are in the realm where "the equilibrium between the individual's claims of freedom and society's demands upon him left to be struck *ad hoc* on the basis of a subjective evaluation . . ." Amsterdam, *supra* at p. 93. In the case of the statutes the subjectiveness is all that exists. There is no objective framework. The conviction turns on the judge's interpretation through his charge to the jury or what the jury "really feels." Because of the lack of standards judge and jury have free reign to exercise every whim and caprice of the moment. As this Court stated, "no one may be required at peril of life, liberty or property to speculate as to the meaning of penal statutes. All are entitled to be informed as to what the state commands or forbids." *Lanzetta* v. *New Jersey*, 306 U.S. 451, 453 (1939). But what does the state forbid in our case, a "failure to perceive" which failure is unreasonable or unjustifiable or leads to a substantial risk. These words are merely that—words without meaning, applied arbitrarily jury by jury, judge by judge.*

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* There are two prior New York cases dealing with the statute in question. Neither one is helpful. *People of the State of New York* v. *Haney*, 30 N.Y.2d 328, 33 N.Y.S.2d 403 (1972), discussed Penal Law §125.10 as it ruled on a sufficiency of evidence question. The constitutional issues were not raised or discussed. 30 N.Y.2d at page 335.

In *People* v. *Buffington*, 304 N.Y.S.2d 746, 61 Misc.2d 429 (1969), reversed on other grounds 35 App. Div. 1063, 316 N.Y.S.2d 481, the trial judge, after examining the change from "conscious disregard" (the old law) to "failure to perceive" (the new law) and the legislative history of the subject ("the annotators admit,

As this Court stated in *Papachristou* v. *City of Jacksonville,* 405 U.S. 156, 162, 92 S. Ct. 839, 843, 31 L. Ed.2d 110, a penal law is void for vagueness when it " 'fails to give a person of ordinary intelligence fair notice that his contemplated conduct is forbidden . . .' *United States* v. *Harris,* 347 U.S. 612, 74 S. Ct. 808, 812, 98 L. Ed. 989." Penal Law §125.10 does not reach such a standard. There simply is no way a man of ordinary intelligence could read the subject statute and know what he must do. (Cf. *United States* v. *Brewer,* 139 U.S. 278, 288, 11 S. Ct. 538, 541, 35 L. Ed. 190.) Is a man who takes his car out, not having it inspected before he drives it in this instance, and his tires are worn leading to a blowout and subsequent accident, guilty of being criminally negligent? And if he does precisely the same thing but has no blowout, is he guilty of attempted criminal negligence? *Buffington* in response would say "it is asking too much of the fact-finding process not to determine if an act was or was not done, but to select which acts are crimes and which are

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with commendable candor, that the section as written is incapable of any real clarification" 304 N.Y.S.2d at 757) states:

> "The frankly admitted existence of 'tautological articulation,' 'inevitable ambiguity' and 'begging the question' where clarity is essential and confusion abhorrent is precisely the kind of draftsmanship which invites speedy burial. The contrast with the deliberate and painstakingly evolved definition of criminal negligence previously developed by the courts is too striking to be ignored. There is neither excuse nor justification for such legislative obscurity and small comfort, if any, in telling a man that although he has been convicted for a loosely defined perceptual error, he is not being punished quite so severely as other homicides. Standards for a crime so new in concept and application should be articulated with precision and care . . . Instead, we have a definition of culpability 'that would . . . be the envy of those monastics whose hitherto favorite pastime had been debating the number of angels who might dance on the head of a pin.' "

not . . . [we] must not leave it for the judge or jury to guess at: we are obliged to be judged solely by the whim of the hour" 304 N.Y.S.2d at 759 citing *People* v. *Grogan*, 260 N.Y. 138, 147, 183 N.E. 273, 276.

Perhaps, years ago in *Cline* v. *Frink Dairy Co.*, 247 U.S. 445, 446 (1927) this Court stated the dilemma posed by statutes such as these as:

> "It will not do to hold an average man to peril of an indictment for the unwise exercise of his, . . . knowledge involving so many factors of varying effect, that neither the person to decide in advance nor the jury to try him after the fact can safely and certainly judge the result."

This statute will not do. Penal liability is a severe consequence. "Failure to perceive" concerns itself with theory applied arbitrarily. The statute is void because it is vague.

CONCLUSION

For the reasons stated above certiorari should be granted.

Respectfully submitted,

DAWSON & SCHWARTZ
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Attorneys for Petitioner

Of Counsel:

MARTIN GARBUS, Esq.
HARLEY I. LEWIN, Esq.

APPENDIX

Decision of the Court of Appeals

Nov. 21, 1973

No. 94

THE PEOPLE & c.,

Respondent,

vs.

EUGENE KEALEY,

Appellant.

Order affirmed.

No opinion.

All concur.

Remittitur of the Court of Appeals

No. 94

COURT OF APPEALS

State of New York, ss:

Pleas in the Court of Appeals held at the Court of Appeals Hall, in the City of Albany, on the 21st day of November, in the year of our Lord one thousand nine hundred and seventy-three, before the Judges of said Court.

Witness,

The Hon. Stanley H. Fuld,
Chief Judge, Presiding

James M. Flavin, Clerk.

Remittitur November 21, 1973

No. 94 73

The People &c.,

Respondent,

vs.

Eugene Kealey,

Appellant.

Be it Remembered, That on the 8th day of February in the year of our Lord one thousand nine hundred and seventy-three, Eugene Kealey, the appellant—in this cause, came here unto the Court of Appeals, by Dawson &

Schwartz, his attorneys, and filed in the said Court a Notice of Appeal and return thereto from the order of the Appellate Division of the Supreme Court in and for the Second Judicial Department. And The People, & c., the respondent in said cause, afterwards appeared in said Court of Appeals by William Cahn, D.A., Nassau County.

Which said Notice of Appeal and the return thereto, filed as aforesaid, are hereunto annexed.

Whereupon, The said Court of Appeals having heard this cause argued by Mr. Richard B. Schwartz, of counsel for the appellant—, and by Mr. Henry P. DeVine, of counsel for the respondent—, and after due deliberation had thereon, did order and adjudge that the order of the Appellate Division of the Supreme Court appealed from herein be and the same hereby is affirmed.

And it was also further ordered, that the record aforesaid, and the proceedings in this Court, be remitted to the County Court, Nassau County, there to be proceeded upon according to law.

Therefore, it is considered that the said order be affirmed, as aforesaid.

And hereupon, as well the Notice of Appeal and return thereto aforesaid as the judgment of the Court of Appeals aforesaid, by it given in the premises, are by the said Court of Appeals remitted into the County Court, Nassau County, before the Judges thereof, according to the form of the statute in such case made and provided, to be enforced according to law, and which record now remains in the said County Court, before the Judges thereof, & c.

JAMES M. FLAVIN
Clerk of the Court of Appeals
of the State of New York

Court of Appeals, Clerk's Office,)
Albany, November 21, 1973.)

I HEREBY CERTIFY, that the preceding record contains a correct transcript of the proceedings in said cause in the Court of Appeals, with the papers originally filed therein, attached thereto.

JAMES M. FLAVIN
Clerk.

Decision of the Appellate Division of the Supreme Court, Second Judicial Department

(336 N.Y.S.2d 440)

THE PEOPLE, etc.,

Respondent,

v.

JOSEPH T. KEELEY,

Appellant.

Supreme Court, Appellate Division, Second Department. Oct. 16, 1972. Order of the County Court, Nassau County, dated December 31, 1969, affirmed. No opinion.

LATHAM, Acting P.J., and SHAPIRO, GULOTTA, CHRIST and BRENNAN, JJ., concur.

Order Staying Judgment of Conviction

COURT OF APPEALS
OF THE STATE OF NEW YORK

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

—against—

EUGENE F. KEALEY,

Defendant-Appellant.

The above named Defendant-Appellant, EUGENE F. KEALEY, having made an application before me for an Order Staying the Execution of the Judgment of Conviction of the County Court of Nassau County rendered on the 3rd day of May, 1971, convicting him of the crime of criminally negligent homicide, which conviction was affirmed by the Appellate Division, Second Department on the 6th day of March, 1972, and which conviction was affirmed by the Court of Appeals on the 21st day of November, 1973, and permitting him to continue at large with bail fixed at $1,000.00, and a question of the Constitutionality of Section 125.10 of the Penal Law having been contained in both the appeal to the Appellate Division and the appeal to the Court of Appeals and necessarily decided upon

Now, upon motion of DAWSON & SCHWARTZ, Esqs., attorneys for Defendant-Appellant, it is

ORDERED, that Execution of the Judgment of Conviction herein is stayed for a period of thirty (30) days from the date of this Order with Notice of Entry thereof to Appellant's Counsel; and if during this thirty (30) day period application is made to the United States Supreme Court for a Writ of Certiorari, it is further

ORDERED, that the Execution of the Judgment of Conviction herein is stayed pending determination in the United States Supreme Court for Appellant's Writ of Certiorari, and it is further

ORDERED, that during the period of stay aforesaid Appellant shall be entitled to continue at large with bail fixed at $1,000.00.

ENTER:

SOL WACHTLER
Associate Judge of the
Court of Appeals

Dated Nov. 29, 1973